

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL KANE, et al.,

Plaintiffs,

**ORDER**

- against -

21 Civ. 7863 (NRB)

BILL DE BLASIO, et al.,

Defendants.

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MATTHEW KIEL, et al.,

Plaintiffs,

21 Civ. 8773 (NRB)

- against -

THE CITY OF NEW YORK, et al.,

Defendants.

-----X  
**NAOMI REICE BUCHWALD**  
**UNITED STATES DISTRICT JUDGE**

On August 26, 2022, we issued a Memorandum and Order denying plaintiffs' fourth motion for a preliminary injunction and granting defendants' motion to dismiss the complaint in its entirety. See Dkt. 21-cv-7863, ECF No. 184. Plaintiffs appealed on August 29, 2022 and subsequently moved for an award of attorney's fees, costs, and expenses against defendants on September 13, 2023. See Dkt. 21-cv-7863, ECF Nos. 186, 190; Kane v. De Blasio, 22-1876, 2d Cir. (2022).

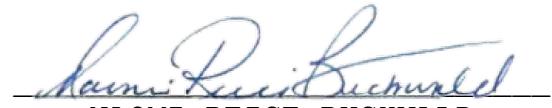
Plaintiffs' application presented an obvious threshold issue of whether plaintiffs are prevailing parties, which cannot be

resolved until the Second Circuit addresses their appeal and the motion can be fully briefed. Neither has occurred.

Accordingly, plaintiffs' motion is denied without prejudice to its renewal at the appropriate time. See Leibovitz v. Paramount Pictures Corp., No. 94-cv-9144 (LAP), 1997 WL 542560, at \*1 (S.D.N.Y. Sept. 3, 1997) (deferring "the attorney's fees question until defendant's status as a prevailing party is confirmed by the Court of Appeals"). The Clerk of Court is respectfully directed to terminate the open motions filed on the two dockets in this case. See Dkt. 21-cv-7863, ECF Nos. 195, 197; Dkt. 21-cv-8773, ECF No. 90.

**SO ORDERED.**

Dated: New York, New York  
July 13, 2023

  
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NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE